

**HOLTZMAN VOGEL PLLC**  
*Attorneys at Law*

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OFFICE OF GENERAL  
COUNSEL

September 8, 2010

45 North Hill Drive  
Suite 100  
Warrenton, VA 20186  
p/540-341-8808  
t/540-341-8809

Christopher Hughey, Esq.  
General Counsel's Office  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**Re: Response in MUR 6335 of Moak For Congress and Sally Lattimer, in her capacity as Treasurer**

Dear Mr. Hughey,

This Response is submitted by the undersigned counsel on behalf of Moak For Congress and Sally Lattimer, in her capacity as Treasurer, in response to the Complaint designated as Matter Under Review 6335.

Steve Moak lost his primary election on August 24, 2010, and is no longer a candidate for Federal office. It is Mr. Moak's sincere hope that this matter can be disposed of expeditiously so that he may complete the winding down process and terminate Moak For Congress as soon as possible.

The Complaint identifies five print advertisements that allegedly fail to satisfy the Commission's disclaimer requirements. Each allegation is addressed below.

**1. "Join me for a neighborhood meeting"**

The first mail piece referenced in the Complaint (and identified as "Mailer No. 1") is an invitation to join Steve Moak "for a neighborhood meeting." See Exhibit 1. On both sides of the mailer, the Moak For Congress logo is prominently displayed along with a photograph of Mr. Moak. The text is written in the first person, and it is clear that the message is from Mr. Moak. The source of the mailer is absolutely clear and no one reading the mailer could possibly be confused. The mailer is, however, missing the formal disclaimer required by 11 C.F.R. §§ 110.11(b) and (c)(2).

In similar cases, the Commission has routinely dismissed minor technical violations such as this as a matter of prosecutorial discretion, often because they rate low on the Commission's Enforcement Priority System. See, e.g., MUR 6163 (Houghton County Democratic Committee) (dismissing complaint); MUR 6132 (Queen Anne's County Democratic Central Committee) (dismissing complaint); MUR 6118 (Bob Roggio for Congress) (dismissing complaint); MUR

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6103 (Singh For Congress 2008, Inc.) (dismissing complaint); MUR 6068 (Arcuri For Congress) (dismissing complaint); MUR 6046 (Ben Crystal for Congress) (dismissing complaint); MUR 6041 (Richard Hanna for Congress Committee) (dismissing complaint); Factual and Legal Analysis in MUR 5865 (New Trier Democratic Organization) (dismissing complaint). Respondent requests treatment consistent with the Commission's current practices.

## 2. "From the Desk of Debbie Moak"

The second mail piece referenced in the Complaint (and identified as "Mailer No. 2") is a fundraising letter from the Mr. Moak's wife, Debbie Moak. See Exhibit 2. The Moak for Congress logo is prominently featured on the reply card. Mrs. Moak's letter includes the following language:

- "If you'd like to contribute or get involved as a volunteer, we welcome you with open arms. Just send back the enclosed reply card and become part of our campaign."
- "On behalf of Steve and the campaign, thank you for your time and interest. Please forward this letter to your friends by emailing them this link: <http://www.moakforcongress.com/Debbie>."

The source of the letter is clear and it is unlikely that anyone reading it was confused. The letter, however, is missing the formal disclaimer required by 11 C.F.R. §§ 110.11(b) and (c)(2). As noted above, in similar cases, the Commission has routinely dismissed minor technical violations such as this as a matter of prosecutorial discretion, often because they rate low on the Commission's Enforcement Priority System. See, e.g., MUR 6163 (Houghton County Democratic Committee) (dismissing complaint); MUR 6132 (Queen Anne's County Democratic Central Committee) (dismissing complaint); MUR 6118 (Bob Roggio for Congress) (dismissing complaint); MUR 6103 (Singh For Congress 2008, Inc.) (dismissing complaint); MUR 6068 (Arcuri For Congress) (dismissing complaint); MUR 6046 (Ben Crystal for Congress) (dismissing complaint); MUR 6041 (Richard Hanna for Congress Committee) (dismissing complaint); MUR 5865 (New Trier Democratic Organization) (dismissing complaint). Respondent requests treatment consistent with the Commission's current practices.

## 3. "Got Moak?"

The third mail piece referenced in the Complaint (and identified as "Mailer No. 3") features the "Got Moak?" logo. See Exhibit 3. The Complainant asserts that "Mailer No. 3 Has Improper Placing and Sizing of the 'Paid for by' Disclosure." Complainant wrongly claims that "11 CFR § 110.11(c)(2)(i) requires that the font size of the disclaimer be at least 12-point type set." Complainant confuses the regulation's "safe harbor" for a requirement. The requirement is simply that "[t]he disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication." 11 C.F.R. § 110.11(c)(2)(i); see also Final Rule on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,965 (Dec. 13, 2002). While not as large as some of the other lettering including in the mail piece, it seems indisputable that the disclaimer is "clearly readable" both in terms of type size (11 C.F.R. § 110.11(c)(2)(i)) and degree of color contrast (11 C.F.R. § 110.11(c)(2)(iii)).

Apparently desperate to harass Moak For Congress, the Complainant also argues that the disclaimer is not "set apart from the other contents of the communication" because "the disclaimer is found on [sic] the middle of an image near the center of the mailer itself." We believe that Complainant misreads the regulation, and that no such requirement actually exists. There is no legal requirement prohibiting the placement of a properly boxed disclaimer over, on top of, or within other content in a communication, so long as "the disclaimer is presented in a clear and conspicuous manner." 11 C.F.R. § 110.11(c)(1).

Commission regulations require that "[t]he disclaimer must be contained in a printed box set apart from the other contents of the communication." 11 C.F.R. § 110.11(c)(2)(ii). However, neither the regulation nor the Explanation and Justification of the regulation (Final Rule on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. at 76,966) explains precisely what this language means.

One enforcement matter that references the "set apart" requirement does not treat it as a requirement separate and distinct from the "printed box" requirement, as the Complainant does. See MUR 5780 (Santorum 2006). In MUR 5780, the Commission treated the "printed box" requirement and the "set apart" requirement as a single requirement. For example, the Conciliation Agreement states: "10. Respondents paid for a solicitation for a March 24, 2006 fundraiser at a private residence in Pennsylvania, featuring President George Bush as the guest speaker. The solicitation included the disclaimer 'Paid for by Santorum 2006' in small font at the bottom of the invitation. 11. The disclaimer was not contained in a printed box set apart from the other contents of the communication." There is no discussion suggesting that the "set apart" language has anything to do with the disclaimer's proximity to other content in the communication.

However the provision is interpreted, Moak For Congress satisfied it. Upon looking at the mail piece, one can plainly see that the disclaimer is "set apart" from the other text on the page, no language other than "Paid for by Moak for Congress" appears within the printed box, the disclaimer is not buried within a paragraph of text, and the disclaimer is not otherwise "hidden" from view. The disclaimer is "presented in a clear and conspicuous manner." Accordingly, the disclaimer included on the "Got Moak?" mail piece fully complies with Commission requirements. To the extent anyone disagrees, recent precedent supports dismissal of such a minor, non-substantive matter. See, e.g., MUR 6163 (Houghton County Democratic Committee) (dismissing complaint); MUR 6132 (Queen Anne's County Democratic Central Committee) (dismissing complaint); MUR 6118 (Bob Roggio for Congress) (dismissing complaint); MUR 6103 (Singh For Congress 2008, Inc.) (dismissing complaint); MUR 6068 (Arcuri For Congress) (dismissing complaint); MUR 6046 (Ben Crystal for Congress) (dismissing complaint); MUR 6041 (Richard Hanna for Congress Committee) (dismissing complaint); MUR 5865 (New Trier Democratic Organization) (dismissing complaint).

#### 4. "Balanced Budget Pledge"

The fourth mail piece referenced in the Complaint (and identified as "Mailer No. 4") contains "Steve Moak's Balanced Budget Pledge." See Exhibit 4. Complainant correctly asserts

that "[t]he disclaimer printed on this piece does *not* have a box around the text." Respondent regrets the omission.

In addition to routinely dismissing cases involving omitted disclaimers (see above), the Commission has also routinely dismissed "missing box" cases. *See, e.g.*, MUR 6153 (New Mexico Democratic Legislative Campaign Committee); MUR 5980 (Chris Hackett for Congress); MUR 5925 (Friends of Kyle Foust); MUR 5876 (Republican Party of Brevard County). Respondent requests treatment consistent with the Commission's current practices.

**5. "Securing the Border"**

The fifth mail piece included in the Complaint describes Mr. Moak's approach to "Securing the Boarder." *See* Exhibit 5. According to the Complainant, this mail piece lacks a disclaimer. Complainant is incorrect and obviously did not inspect the mail piece closely. The mail piece includes a prominent "Paid for by Moak for Congress" disclaimer that appears in white text in the bottom left hand corner of the photograph of Mr. Moak and his family. The disclaimer should be contained within a printed box. Again, Respondent regrets the omission. As noted above, the Commission routinely dismisses "missing box" cases. *See, e.g.*, MUR 6153 (New Mexico Democratic Legislative Campaign Committee); MUR 5980 (Chris Hackett for Congress); MUR 5925 (Friends of Kyle Foust); MUR 5876 (Republican Party of Brevard County). Respondent requests treatment consistent with the Commission's current practices.

Please feel free to contact us if you have any questions or if you require any additional information.

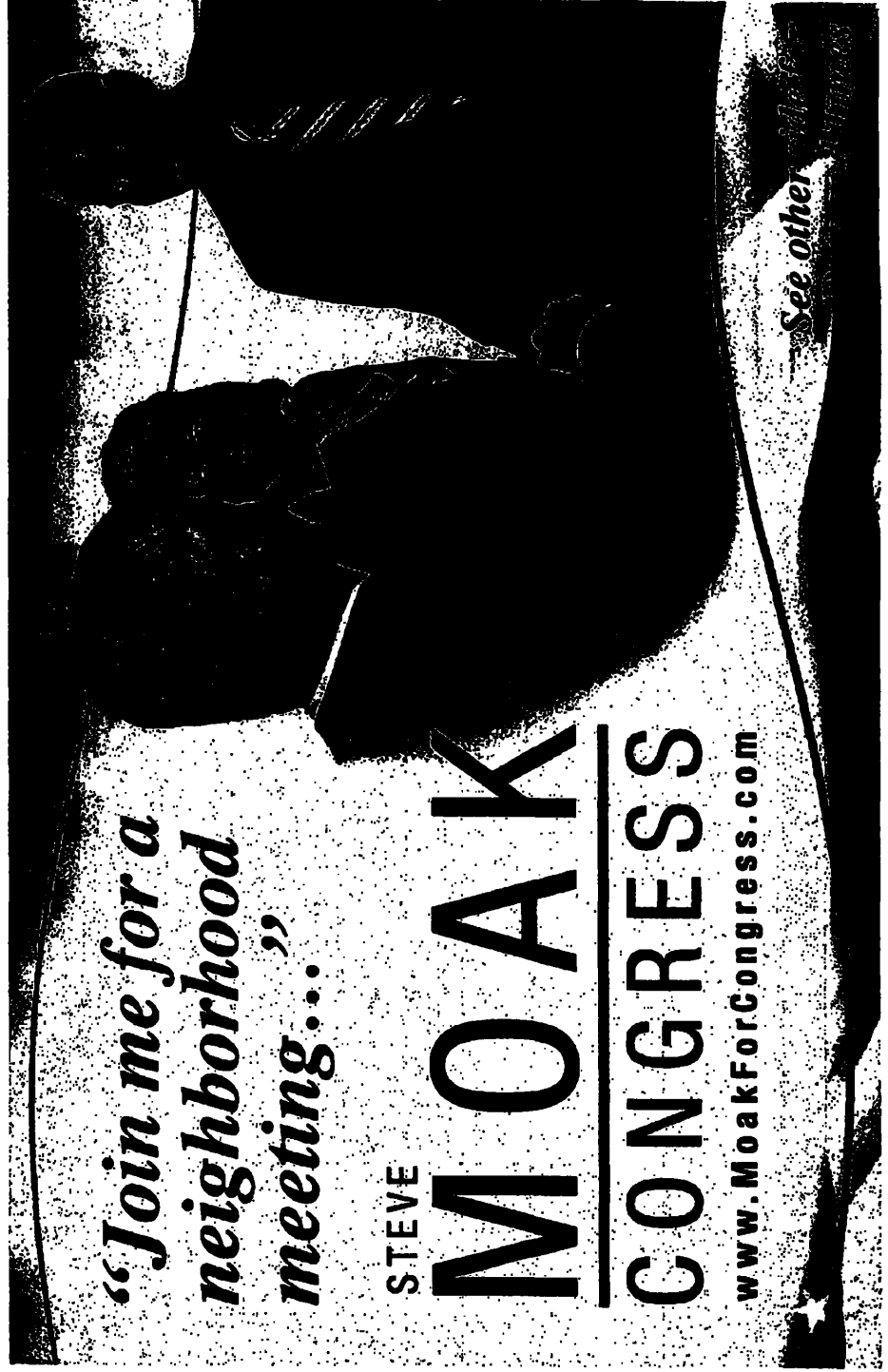
Sincerely,



Jason Torchinsky  
Michael Bayes

# EXHIBIT 1

11044291756



*“Join me for a  
neighborhood  
meeting...”*

STEVE

**MOAK**

**CONGRESS**

[www.MoakForCongress.com](http://www.MoakForCongress.com)

See other

# A Businessman, not a Politician

<FIRST NAME>

I invite you to join me on <DATE> at <LOCATION>

I've logged dozens of hours speaking to local groups about why we need a new approach in Washington. We need someone in Congress who understands the impact of federal decisions on Arizona citizens and small businesses.

As a local businessman, I've created jobs, and I understand the importance of balancing a budget. That's the kind of leadership and experience we need representing Arizona's 3rd District in Congress.

I know you also have ideas about how Washington can better serve us. Here's your chance to join me and tell me exactly what's on your mind.

Please join me for this neighborhood meeting and make your voice heard!

When: <DATE>

Where: <LOCATION>

Address: <STREET ADDRESS>

Time: <TIME START AND END>

Complimentary refreshments and snacks will be served.

Please RSVP to:

<PHONE NUMBER> by <DATE MINUS ONE DAY>

**We look forward to seeing you there - and be sure to bring along a family member, friend, or neighbor!**



STEVE  
**MCQUAK**  
**CONGRESS**  
www.McQuakForCongress.com  
PO BOX 462  
10848 N. Tatum Blvd., Ste 200  
Phoenix, AZ 85028

FIRST CLASS MAIL  
US POSTAGE PAID  
PHOENIX, AZ 85028  
PERMIT NO. 1405

# EXHIBIT 2

11044291759




11044291760


From the Desk of Debbie Moak

10645 North Tatum Boulevard, Suite 200 - Phoenix, Arizona 85028

11044291761




**NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES**



**BUSINESS REPLY MAIL**  
FIRST-CLASS MAIL    PERMIT NO. 488    PHOENIX, AZ

POSTAGE WILL BE PAID BY ADDRESSEE

**MOAK FOR CONGRESS**  
# 482  
10645 N TATUM BLVD STE 200  
PHOENIX AZ 85028-9817



**STEVE**  
**MOAK**  
**CONGRESS**  
[www.MoakForCongress.com](http://www.MoakForCongress.com)

☐ Yes Steve, you can count on my support!

☐ Please contact me about volunteering to help

☐ Send me a yard sign

☐ Enclosed is a contribution to Moak for Congress for \$ \_\_\_\_\_

Name \_\_\_\_\_

Email Address \_\_\_\_\_ Phone number \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Comments or Recommendations \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# From the Desk of Debbie Moak

10645 North Tatum Boulevard, Suite 200 - Phoenix, Arizona 85028

Dear Friend,

Twenty-eight years ago, as Steve and I loaded up our two boys for a trip in our old, beat-up 1965 Buick Skylark with missing floorboards, I asked him a scary question:

"Honey, do you know that we're living at the poverty level right now?"

We had heard on the radio that the poverty level for a family of four in 1982 was \$9,862. I did the math in my head, and that's just about what we expected to make that year.

Steve looked at my worried face and responded kindly, reassuring me, "Yes, I know ... but we're doing something about it, and that's what matters. I promise you that I'll do all I can to make our life better."

Many young couples start off without much, and that's how it was for Steve and me. Neither one of us knew what to expect when we began our new life together.

**What I did know is this: I had married a man with an irreducible work ethic — a man of character and action who kept his promises and inspired others to be better.**

When I met Steve Moak, he was stocking groceries at the local A&P supermarket. It sounds silly, but ours was truly "love at first sight," and we soon became college sweethearts.

Since that time — and since that worried question I posed to him before we moved to Arizona — he has fulfilled on his promise and then some.

Steve has exceeded my expectations as a husband and father. Thirty-five years ago, that young college boy who was stocking groceries was the hardest working kid I'd ever met. Thankfully, he stayed that way.

**As I look back on our life together, Steve's accomplishments illustrate that faith, hard work, and doing good for others are the true ingredients for an American success story.**

We all know that the past two years have been difficult to watch as our country loses its direction. For Steve, it's been excruciating.

I've watched my husband follow politics since we were married. I've also watched him work hard to make our community better at the local level. As a successful entrepreneur, Steve has created hundreds of jobs in Arizona. As a community leader, he's served on nonprofit boards and has volunteered for organizations like the United Way, the Dorrance Family Foundation, and Social

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Venture Partners of Arizona. He was also instrumental in building Young Life's Lost Canyon Camp — an incredible resource for children and families in Arizona.

Steve and I even founded our own organization in 2000 after illegal drugs touched our family. NotMyKid, Inc. is a nonprofit dedicated to inspiring positive life choices. We've helped thousands of kids reject drugs and rebuild their lives through prevention and education on drug abuse, Internet safety, eating disorders, and bullying.

Then, Steve decided to take his passion for fighting drug abuse to a new level. After we founded NotMyKid, he acquired First Check, a home diagnostic company with expertise in home drug testing. Steve expanded retail distribution to make home drug testing available to parents nationwide. His success was recognized with an appointment to President Bush's Advisory Commission on Drug-Free Communities in 2006.

While some people would be content with these amazing accomplishments, Steve wanted to do even more. He came to me earlier this year and asked, "Debbie, do you think I would make a good Congressman?"

What an impossible question to answer... I always thought Steve's leadership, work ethic, and character are just what Washington needs. But I also know that politics is too-often a dirty business.

I told Steve no, it would be too hard. It would be too public. Our lives would be turned upside down.

Most concerning to me, this amazing man would be attacked by complete strangers for his success and accomplishments. In today's negative and cynical world, the naysayers would never believe that Steve was a true American success story who used to drive his family around in an old 1965 Buick with rusted out floorboards.

But deep down inside, I knew that Steve Monk would be the best Congressman that Arizona had ever seen.

That night, Steve and I spoke about my concerns. I decided to leave it in God's hands, and I asked Him to give me a clear sign. I prayed for Him to either open the doors wide for Steve, or slam them shut so we would know for certain the path.

Over the next few weeks, Steve listened to his heart and asked hundreds of people what they wanted in their next Congressman. He received very positive feedback, and we both saw the need for experienced, bold leadership on behalf of Arizona's 3rd District.

When we met with our friends, they agreed. And then, after hearing Steve's passionate plea to take his public service to the next level, one of them said...

**"Steve, if you want to serve the people of Arizona in Congress, the door is wide open for you."**

That was the green light — the clarity of direction — we had prayed for. I began to cry.

Now that we've had a chance to talk to the people of Arizona's 3rd District, Steve and I understand what needs to be done. For years, Steve has served our community at the local level and has changed thousands of lives. Now he has been called to a higher level of service where he can provide Arizona and America with the unique experience he has gained in life and in business.

Thirty-five years later, I'm still in love with this hard-working supermarket stock boy who chased the American dream. I truly believe that Steve Moak is the one candidate for Congress who is the right man, at the right time, for the right reason.

I invite you to join me in supporting this man of character and results. If you'd like to contribute or get involved as a volunteer, we welcome you with open arms. Just send back the enclosed reply card and become part of our campaign.

Please also remember to mark your calendar for primary election day on Tuesday, August 24th. Be sure to cast your vote and make your voice heard.

On behalf of Steve and the campaign, thank you for your time and interest. Please forward this letter to your friends by emailing them this link: <http://www.moakforcongress.com/Debbie>

With warmest regards,

  
Debbie Moak

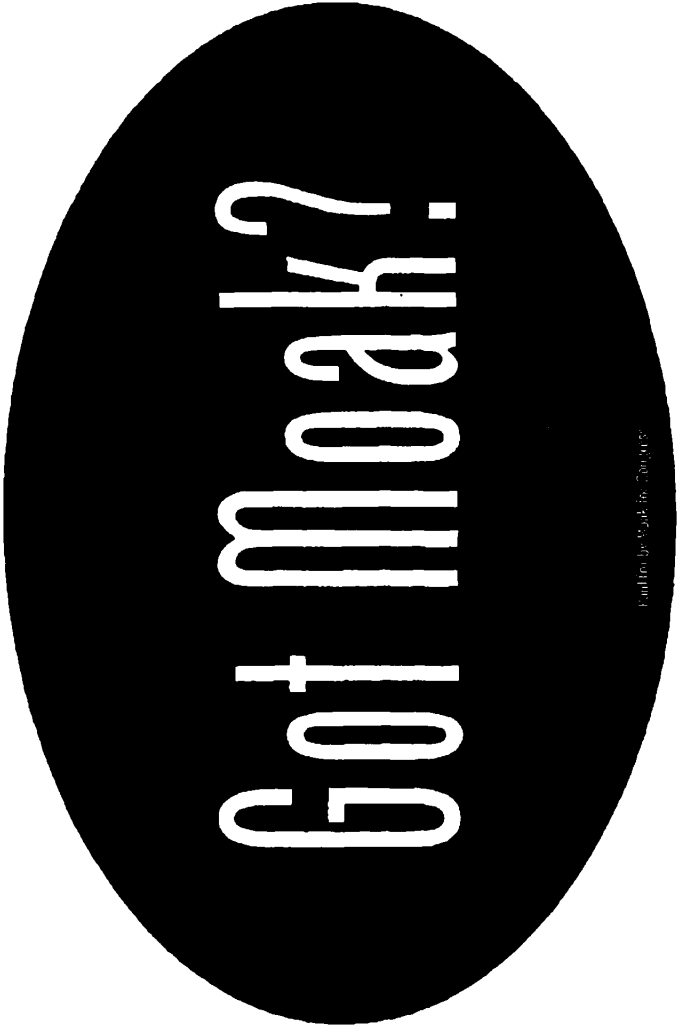
P.S. — I've known this man for 35 years, and Steve Moak does not disappoint. I'll admit that some things have changed since we got married... Our two wonderful boys are all grown up, and we no longer drive that old Buick with the missing floorboards. Through the years, Steve's work ethic, positive attitude, and commitment to the community has never wavered. He sets his mind to something and gets results. That's the kind of experienced and successful leader we need representing Arizona in Congress!

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# EXHIBIT 3

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Got Moak?

© 2000 The Moak Co. All Rights Reserved.

**Family Man • Businessman • Community Champion**

11044291767



For years, Steve Moak has contributed to our economy and community. As a successful Arizona business owner, he has created jobs and changed thousands of lives.

Steve Moak is now running for Congress, where he can provide Arizona and America with the unique insights he has gained in life and in business.

To learn more, visit: [www.moakforcongress.com](http://www.moakforcongress.com)

STEVE  
**MOAK**  
**CONGRESS**  
[www.MoakForCongress.com](http://www.MoakForCongress.com)

PO BOX 462  
10049 N. Tatum Blvd., Ste 200  
Phoenix, AZ 85028

PRESENT STANDARD  
US POSTAGE  
PAID  
PHOENIX, AZ 85028  
PERMIT NO. 1406



# EXHIBIT 4

11044291768

11044291769

*"If the federal  
budget isn't  
balanced in six  
years, then I'm  
coming home. It's  
the only way I  
know to hold an  
Elected Official  
accountable."*

*Steve Moak*

STEVE  
**MOAK**

FOR CONGRESS

[www.MoakForCongress.com](http://www.MoakForCongress.com)

FROM THE DESK OF  
STEVE MOAK

As a citizen, I believe in term limits.

As a businessman, I believe in results and accountability.

That's why I'm making this pledge to voters in Arizona: Elect me to Congress, and if the federal budget isn't balanced in six years, then I will come home.

That's it. No fine print, no gimmicks. If the budget isn't balanced in six years, then I'm out of a job.

Other candidates won't make that commitment because, deep down, they all want to be congress man-for-life. And that's part of the problem.

We aren't going to change Washington until we change the type of people we send there.



Steve Moak  
Republican Candidate  
for Congress

**Accountability.  
Results, not Words.  
A Business Approach.**

STEVE  
**MOAK**  
CONGRESS  
[www.MoakForCongress.com](http://www.MoakForCongress.com)

# EXHIBIT 5

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# Steve Moak

Family Man, Businessman and Community Champion



*Paid for by Moak for Congress*

Twenty years ago, Steve Moak and his family loaded up a big yellow moving van and headed west to chase the American dream. They didn't have much when they arrived in Arizona. The Moaks used their entire savings to invest in a business idea Steve had for a customer service company.

ProMark One started small, but quickly expanded to more than 2,500 employees. Steve built the company on integrity and relationships, and his

commitment to these ideals helped ProMark One become one of the country's most successful small businesses.

As a successful entrepreneur, Steve Moak has created hundreds of jobs right here in Arizona. As a husband and father, he has spent countless hours making Arizona a better place to live. Steve has helped children and families fight illegal drugs through NorthMyKid — a nonprofit he and his wife Debbie founded. In addition, he serves on numerous

local nonprofit organization boards, and was appointed by President George W. Bush to serve on the President's Advisory Commission on Drug-Free Communities in 2004.

For years, Steve Moak has contributed to our economy and community. In the process, he has created jobs and changed thousands of lives. Now, he's running for Congress, where he can provide Arizona and America with the unique insights he has gained in life and in business.

PO BOX 483  
18048 N. TOWN HWY., STE 200  
PHOENIX, AZ 85024

PERMIT STANDARD  
US POSTAGE  
PAID  
PHOENIX, AZ 85028  
PERMIT NO. 1408

STEVE  
**MOAK**  
**CONGRESS**  
[www.MoakForCongress.com](http://www.MoakForCongress.com)

Steve Moak will work to  
stop illegal immigration and  
keep illegal immigrants, drug  
smugglers, traffickers, and  
terrorists out of the United States

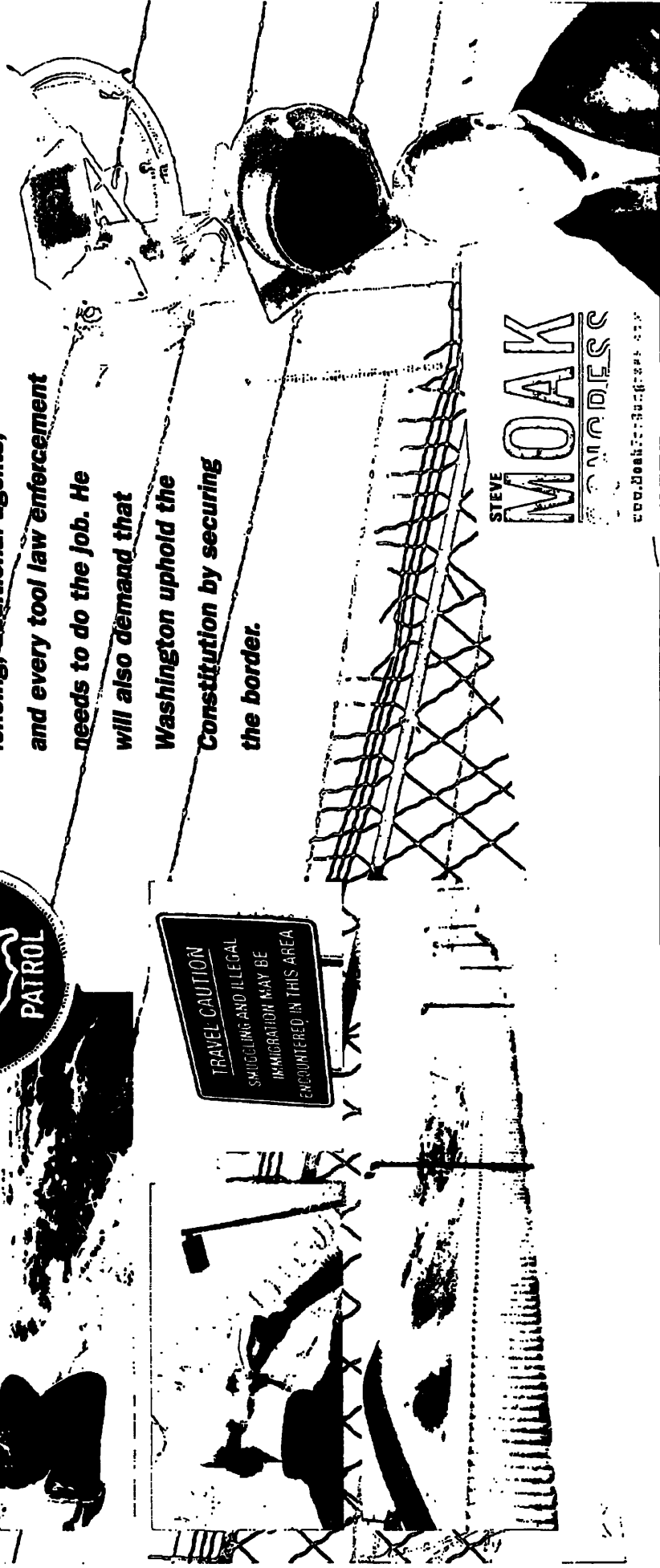


STEVE  
**MOAK**  
**CONGRESS**

[www.MoakForCongress.com](http://www.MoakForCongress.com)

# The Right Approach to Securing the Border... NOW!

**Steve Moak supports Sen. Jon Kyl's plan to deploy more National Guard troops at the border, along with new surveillance, extended fencing, additional agents, and every tool law enforcement needs to do the job. He will also demand that Washington uphold the Constitution by securing the border.**



STEVE  
**MOAK**  
CONGRESS

www.moak.house.gov